



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 28, 1994

Ms. Christine Rodriguez
Staff Attorney
Legal Services, 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR94-097

Dear Ms. Rodriguez:

Your predecessor at the Department of Insurance asked whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ The request was assigned ID# 21805.

The Texas Department of Insurance (the "department") received an open records request for department records relating to specific individuals and insurance entities. The department has agreed to provide most of the requested information. Your predecessor submitted several documents for our review and contended that some of the information found on the records is excepted from disclosure under section 552.111 of the Government Code (formerly section 3(a)(11)). Your predecessor also argued that section 552.107, formerly section 3(a)(7), excepts portions of the same information from disclosure.

Your predecessor contended that the information that is marked on the submitted records is excepted from disclosure by section 552.111. Your predecessor mistakenly claimed with regard to some of the documents, however, that section 552.111 protects attorney work product from disclosure. Section 552.111 excepts from disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993) at 5, this


¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

office held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. Although section 552.111 might apply to some information that also qualifies as attorney work product, work product is excepted from disclosure under section 552.103. Open Records Decision No. 429 (1985) at 4. Section 552.103 excepts from disclosure information "relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision of a state is or may be a party" To withhold information under section 552.103, a governmental body must demonstrate that it is involved in or reasonably anticipates litigation and that the information relates to that litigation. *See* Open Records Decision No. 542 (1990) at 2 (stating that the governmental body must show how and why an exception applies); 555 (1990) at 2 (declaring that for the litigation exception to apply the requested information must relate to litigation that is pending or reasonably anticipated).

We have examined the documents submitted for our review and conclude that they contain some recommendations and opinions that may be withheld under section 552.111. You have not demonstrated, however, that the department is involved in or reasonably anticipates litigation to withhold any of the information as attorney work product under section 552.103. Therefore, you may not withhold any information as attorney work product under section 552.103. On other hand, we have marked the information that you may withhold under section 552.111.²

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open-records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/rho

Ref.: ID# 21805

Enclosures: Marked documents

²Because we have concluded that you may withhold the marked information under section 552.111 we do not address your arguments under section 552.107 in this ruling.

cc: Mr. John F. Hamje
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(w/o enclosures)